

REMARKS

Applicant thanks the Examiner, Mr. Nguyen, for his courtesy and assistance in advancing the prosecution of this application during a telephone conversation with Applicant's counsel on January 14, 2010. In particular, counsel and the Examiner discussed the proposition that both the restriction requirement dated June 4, 2009, and the currently outstanding Office Action dated October 14, 2009 appear to address Claims 1-26, as the same were included in the original International Application. However, as further discussed, the International Preliminary Report on Patentability, a copy of which was filed with the application, included amended sheets presenting Claims 1 through 24 for examination. Moreover, on March 28, 2006, Applicant also submitted a Preliminary Amendment which amended Claims 1 through 24 as they appeared in the amended sheets.

The restriction requirement mailed June 4, 2009, however, seems clearly addressed to the original Claims 1-26. (This proposition is confirmed by a comparison of the discussion of the respective species with Claims 24, 25 and 26 as denominated in the restriction requirement.) Following an election of Claims 1-23, the outstanding Office Action indicates that there are 23 claims currently pending in the application, predicated apparently on the election of Claims 1-23. However, Applicant's review of the discussion which is contained in the body of

the Office Action confirms that it is addressed to the original Claims 1-26, and not to Claims 1-24 which are currently in the application.

In view of these matters, during the foregoing telephone conversation, counsel and the Examiner agreed that the most expeditious way to deal with this situation, and to clarify the record, is for Applicant to cancel Claims 1 through 24, and submit new Claims 25-48, which are those claims which are properly in the application and should be examined. In addition, counsel also noted that the claims as contained in the Preliminary Amendment filed March 28, 2006, which purported to amend the claims as they appeared in amended sheets, omitted certain verbiage in independent Claims 1 and 22-24 in the amended sheets. Accordingly, for completeness, Applicant notes that Claims 25 and 46-48 as set forth herein contain words which were not in the Preliminary Amendment. Moreover, Applicant has further reformatted the claims in order to place them in a form more appropriate for U.S. prosecution, without, however, further changing their scope.

As discussed, in order to assist the Examiner in reissuing the outstanding Office Action, Applicant provides the following table which correlates the numbering of Claims 25 through 48 with the original Claims 1-26, which were addressed in the outstanding Office Action:

<u>New Claims</u>	<u>Claims in Original International Application</u>
25	1
26	2
27	3
28	4
29	5
30	6
31	7
32	8
33	9
34	10
35	11
36	12
37	13
38	14
39	15
40	16
41	18
42	19
43	20
44	21
45	23
46	24
47	25
48	26

In regard to the foregoing correlation, Applicant notes that the original claims numbered 17 and 20 in the International Application were not included in Claims 1-24 as per the amended sheets, which explains the reduction of two in the overall number of claims.

To summarize, Claims 25-48 as set forth in the foregoing amendment are the claims which are to be examined in this application. Should the Examiner determine to retain the restriction requirement, Applicant notes that claims 46, 47 and 48 correspond, respectively, to Species 2, 3 and 4 as identified by the Examiner.

As discussed with the Examiner during the telephone conversation referred to previously, it was agreed that any attempt on Applicant's part to respond to the entire substantive Office Action would confuse the record in this application because of the inconsistent numbering of claims as between those in the amended sheets/Preliminary Amendment and Claims 1-26 which were actually examined. Accordingly, Applicant will respond as best as is possible to the formal grounds of rejection, and will then provide comments with respect to the distinctions between Claims 25-48 and the cited prior art.

In response to item 4 of the Office Action, the specification has been amended at page 3, line 22 to change the expression "FFT controller" to "fast Fourier transform controller" as suggested by the Examiner. In addition, in response to item 5 on page 3 of the Office Action, Claim 11 has been amended in a similar manner.

In response to item 7 on pages 3 and 4 of the Office Action, Applicant notes that with respect to original Claim 3 (currently numbered Claim 27), if the

determined transmit power spectral density limit does not exceed the minimum, then the signal in question is not transmitted. Similarly, with regard to what was previously Claim 4 (now Claim 28), if no beacons are received at the transmitter, then a spectral power density limit is derived as provided in Claim 25, rather than a "predetermined" limit, which is used only if no beacons are received.

Further, with regard to original Claim 13 (now Claim 37), the receiver does not transmit a beacon if the interference levels do not exceed the acceptable level. Finally, with regard to Claim 20 (now Claim 44), if a beacon receiver fault does not occur, then it is unnecessary to prevent the associated transmitter from transmitting. Applicant respectfully submits that these features of the invention are consistent with the disclosure, and that where a particular event occurs only if a certain condition is fulfilled, it is not necessary to recite that the event does not occur if the condition is not fulfilled. Accordingly, the latter claims are believed to be clear and definite. If, however, the Examiner continues to believe that they are unclear, a further explanation is respectfully requested.

With regard to the cited Haartsen reference (U.S. Patent No. 5,794,157), Applicant notes that it describes a private radio system in which broadcast information from base stations in a cellular system is received. The private system then derives frequencies in use and carries out signal strength

measurements on downlink control signals. From this, the system derives a lower limit which has sufficient power to overcome interference from the cellular system. By contrast, the present invention is directed to a system for determining an upper limit for transmission from a secondary system, so that the transmissions do not interfere with the primary system.

The Klein et al reference (Published U.S. Patent Application No. 2007/0004444), on the other hand, provides power where an access point may have a fixed or variable transmittable power. The variable transmitters allow for the power to be adjusted where many access points are close together, whereas the fixed power is more likely to be used where access points are spaced apart. Applicant respectfully submits, however, that the Klein et al publication does not teach or suggest those features of the invention which are set forth in independent Claim 25.

Finally, the Tanno et al (U.S. Patent No. 7,315,566) has been cited only in respect of Claims 10 and 11 (now Claims 34 and 35), as teaching the application of a CDMA protocol such that beacons representing different frequencies are distinguished from one another by different codes. Applicant notes in this regard, however, that Tanno et al is directed to mobile communication using W-CDMA transmission. There is no disclosure in Tanno et al of using beacons as set forth in Claim 25, to prevent interference, or that beacons representing

different frequencies are distinguished by different codes. Accordingly, Applicant respectfully submits that, like Klein et al, Tanno et al does not teach or suggest the invention as claimed.

As noted previously, the foregoing comments have been submitted in order to further the prosecution of this application, and to minimize the delay attributable to the matters discussed above. Applicant again thanks the Examiner for his courtesy in helping to resolve this situation in a manner which moves this application along as quickly as possible.

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

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please charge any deficiency in fees or credit any overpayments to Deposit
Account No. 05-1323 (Docket # 038819.57500US).

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary R. Edwards". The signature is written in dark ink and is positioned above a horizontal line.

Gary R. Edwards
Registration No. 31,824

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
GRE:kms